IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1129 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAFIKBHAI VALIBHAI MANSURI - Petitioner
Versus
STATE OF GUJARAT & 1 - Respondents

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Appearance :

MR BJ TRIVEDI for Petitioner:MR JT TRIVEDI for Applicant:MS JIGNASA B TRIVEDI for Applicant: 1,
MR MA PATEL ADDL PP for Respondent : 1,
MR CL SONI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 25/08/2006

ORAL JUDGMENT

1. Rule. Mr. M.A. Patel, learned Addl.P.P. waives service of Rule on behalf of respondent No. 1 –

State of Gujarat and Shri Soni, learned counsel waives service of Rule on behalf of respondent No. 2. Rule is fixed forthwith at the request of the learned counsel of the respective parties.

2. The petitioner original accused in CR.I. No. 3001 of 2005 at Dhoraji Police Station has preferred this petition under Articles 226 and 227 of the Constitution of India challenging the order dated 25th November, 2005 passed by the learned Judicial Magistrate First Class in Criminal Case No. 214 of 2005, whereby, the muddamal i.e. live stock buffaloes numbering originally in five, now four was rejected, which was subject matter of challenge in Criminal Revision Application filed by the petitioner being Criminal Revision Application No. 15 of 2006 in the Dhoraji Sessions Court, which came to be rejected on 28th April, 2006.

3. Learned counsel Shri Trivedi for the petitioner does not press his challenge to the action of taking cognizance by the learned JMFC at this stage.

4. Shri Trivedi, learned counsel for the petitioner has submitted that the muddamal being live stock ought not to have been denied to the owner pending the criminal proceedings. It is fact that the petitioner was also involved in earlier occasion, wherein, the serious offence for taking the buffaloes for slaughtering as alleged, which is also pending. However,

pendency of that proceedings, cannot be the sole ground for denying the interim custody of live stock. He submits that the courts below have erroneously rejected the request for interim custody of the live stock. Shri Trivedi has drawn this court's attention to the decision of the Apex Court in case of **MANAGER, PANRAPOLE, DEUDAR AND ARS. vs. CHAKRAM MORAJI NAT & ORS., reported in 1998 (2) GLH p.614** and submits that the Panjarapole cannot have better claim then the owner.

5. Shri Patel, learned Addl.P.P. appearing for the respondent No. 1 – State of Gujarat has submitted that in case, if the court is incline to order releasing the live stock of muddamal to the petitioner, then appropriate conditions may be imposed, so that the muddamal be taken care of and there may not be repetition of such offence at the end of the petitioner.

6. Shri Soni, learned counsel appearing for the respondent No. 2 Panjarapole submitted that the provision of Section 35 of the Prevention of Cruelty to Animals Act, 1960 needs to be borne in mind, which requires that the live stock i.e. buffaloes needs to be periodically checked by the qualified Veterinary Officer. He also submits that the respondent No. 2 is ready and willing to keep the buffaloes. He also submits that if the court is inclined to give interim custody of the muddamal to the petitioner, the appropriate conditions be imposed so as to see

that the petitioner may not involved in repeating such kind of offence in future and take proper care of the muddamal live stock.

7. This court has heard the learned counsel for the respective parties at length. Perused the record. The decision cited by Shri Trivedi i.e. Manager, Panjarapole, Deudar (Supra) in unequivocal terms indicates that during the pendency of criminal trial and in absence of conviction, the claim of owner in respect of live stock cannot be denied to the owner. Though the fact remains in the present case that the petitioner is alleged to have committed the offence in respect of the provisions of Prevention of Cruelty to Animals Act, 1960 second time. Earlier offence is much serious than the present one. However, as per the observation of the Apex Court, it would not be just and proper to deprive the petitioner of his interim custody of the live stock at this juncture, when he has stated on oath in the memo of petition that he is not involved in slaughtering activities nor is he any way connected in such type of activities. In view of this, this court is of the opinion that the order passed by the courts below deserve to be set aside and are accordingly set aside. The interim custody of live stock buffaloes now numbering four deserves to be handed to the petitioner on the following terms and conditions:

(a) The petitioner shall take proper care of the live stock buffaloes, which are given to the petitioner by way of interim custody.

(b) The petitioner shall have the buffaloes checked at the intervention of every one month and obtain certificate in writing from the qualified Veterinary Officer of the area.

(c.) The concerned Veterinary Officer of the area is hereby directed to inspect the buffaloes at the request of the petitioner between 1st to 5th days of every month beginning from September, 2006 and issue certificate about the condition of the buffaloes.

(d) In case, in the intervention period, if the buffalo is dead, then the body of the same shall not be removed without calling the Veterinary Officer of the area, who shall certify the cause of death of buffaloes.

(e)The live stock buffaloes are ordered to be given to the petitioner only as interim custody during the pendency of the trial and the petitioner shall produce the live stock before the trial Court as and when it is required and he shall file an undertaking to this effect within 15 days from the date of receipt of this order.

(f) The petitioner shall also indicate in the undertaking that he will keep the buffaloes in good condition.

(g) The petitioner shall furnish bond in the sum of Rs.15,000=00 before the trial Court for

keeping safe custody of the buffaloes. The petitioner is directed that this condition is also be incorporated in the undertaking.

(h) The petitioner shall produce the muddamal live stock before the trial Court as and when their presence is required.

8. With the above direction, the present petition is allowed. Rule is made absolute to the aforesaid extent. Direct service permitted today.

(S.R.BRAHMBHATT, J.)

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